

REMARKS

Pursuant to the non-final Office Action mailed April 3, 2009, Applicant requests reconsideration. To further prosecution of this application, each of the issues raised in the Office Action is addressed herein.

Claims 1-17, 19-32, and 34-41 are currently pending in this application, of which Claims 1, 20, and 32 are independent claims. Claims 1, 20, and 32 have been amended to incorporate the subject matter of Claim 18 and to further clarify that which the Applicant considers to be the invention. Accordingly, Claim 18 has been canceled. The application as now presented is believed to be in allowable condition.

A. Claims Rejected Under 35 U.S.C. § 103

Claims 1-17, 19-32, and 34-41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,259,772 (*Stephens*) in view of U.S. Publication No. 2003/0009530 (*Philonenko*).

Neither *Stephens* nor *Philonenko*, alone or in combination, teach sending at least one of an instant message and an e-mail to the caller network device after attempting to connect the called network device to the caller network device and in response to the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32. The Office Action relies on col. 4, lines 12-20 and col.4, lines 37-61 of *Stephens* for teaching the above feature. However, the cited sections of *Stephens* teach that during an attempt by a calling party to a called party, and in response to no answer from the called party, the message delivery system retrieves a message that is announced audibly on the telephone line so that the calling party can hear the message while the calling party is waiting for the called party to answer. (*Stephens* col. 4, lines 12-20; col.4, lines 37-61). Thus, *Stephens* fails to teach sending at least one of an instant message and an E-mail to the caller network device after attempting to connect the called network device to the caller network device and in response to

the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32. The art of record, including *Philonenko*, fails to bridge the factual deficiencies of *Stephens*.

For at least the reasons above, neither *Stephens* nor *Philonenko*, alone or in combination, teach or suggest sending at least one of an instant message and an e-mail to the caller network device after attempting to connect the called network device to the caller network device and in response to the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32.

The claimed invention advantageously allows a caller to arrange a telephone call with another person at a future time such that the telephone call occurs automatically at the arranged time. As a result of the claimed invention, a time is arranged, at which each party is automatically called in response to the text-based message being received prior to an attempt to make a telephone call. The claimed invention also allows an instant message or e-mail to be sent to the caller network device when a first connection signal is not received from the called network device and the attempt to connect the caller network device with the called network device fails.

Applicant notes that in order to support a claim of *prima facie* obviousness, the cited references must teach or suggest each and every element of the invention and there must be some basis to combine the references and the prior art as suggested. However, nothing in the art of record would, either alone or in combination, teach or suggest each of the elements now defined by amended Claims 1, 20, and 32, respectively.

Applicant respectfully submits that Claims 2-17 and 19, which ultimately depend from Claim 1, Claims 21-31, which ultimately depend from Claim 20, and Claims 34-41, which ultimately depend from Claim 32, are patentable over the art of record by virtue of their dependence. Further, Applicant submits that Claims 2-17, 19, 21-31, and 34-41 define additional patentable subject matter in their own right. Therefore, it is respectfully requested that the

rejection of Claims 1-17, 19-32, and 34-41 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

CONCLUSION

Entry of the amendments to Claims 1, 20, and 32; favorable consideration of Claims 1, 20, and 32, as amended; favorable reconsideration of Claims 2-17, 19, 21-31, and 34-41; and allowance of pending Claims 1-17, 19-32, and 34-41 are solicited.

In view of the foregoing amendments and remarks, the subject application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this Amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number provided below to discuss any outstanding issues.

Respectfully submitted,

/sean r. macdavitt /
Sean R. MacDavitt
Registration No.: 64,527
Attorney for Applicant

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(516) 822-3550
SRM:mak